IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Arbitration Petition No. 20 of 2007

Aditya Birla Nuvo Ltd ... .. Petitioner
V/S
Ram Niranjan Kedia Tourism Services Private Ltd. . Respondent

Mr. J.P. Sen with Ms. Singh i/b.
MULLA AND MULLA for petitioner.
Mr. V.V.KHEMKA for respondent.

CORAM: **D.G. KARNIK J**.

DATE: February , 14, 2007

P.C.:

1. Heard counsel for the parties.

2. This petition has been filed under section 9 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") for sale of the motor vehicles pending the award.

3. The petitioner financed the respondent for purchase of the motor vehicles. As the respondent committed default in payment of the installments agreed, the petitioner invoked the arbitration for recovery of the money due. The petitioner then moved the court under section 9 of the Arbitration Act for the appointment of a receiver in respect of the vehicles financed. The receiver was appointed and the vehicles are

in the custody of the receiver. The arbitration proceedings are pending. During pendency of the arbitration proceedings this petition has been filed seeking an order of sale of the vehicles which are in the custody of the receiver. The request is opposed by the respondent.

4. Section 9 of the Arbitration Act enables the court to pass an interim order for the purpose of preservation, custody and sale of any goods which are subject matter of the arbitration agreement. The interim order is readily passed for the purpose of preservation of the property which is the subject matter of the dispute. An order for sale of the property pending adjudication by an award, however, is an exception. No exceptional circumstances have been made out for granting permission for sale of the property pending decision/ award. If the petitioner ultimately fails in securing an award in its favour it may be required to return the vehicles to the respondent. If the sale is permitted pending decision an irretrievable situation would be created under which the possession of the vehicles cannot be restored to the respondent even if he succeeds before the arbitral tribunal.

Further more no exceptional grounds have been made out for sale of the vehicles.

5. It is pertinent to note that the arbitration proceedings were commenced in the year 2002. Noting is mentioned in the petition why the petitioner could not pursue the arbitration proceedings to their conclusion so far. In the circumstances I see no merit in the petition. The petition is hereby dismissed.

(D.G. KARNIK J.)